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Attorneys for America Can! Cars for Kids

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

KARS 4 KIDS INC.,

Plaintiff,

v.

AMERICA CAN!,

Defendant.

Case No. 3:14-cv-07770-PGS-LHG

AMERICA CAN! Cars for Kids,

Plaintiff,

v.

KARS 4 KIDS INC.,

Defendant.

Case No. 3:16-cv-04232-PGS-LHG

AMERICA CAN! CARS FOR KIDS' PROPOSED VERDICT FORM

America Can! Cars for Kids requests that the Court present the following Verdict Form to the jury:

By submitting this proposed jury verdict form, America Can! Cars for Kids does not concede that Kars 4 Kids' claims, or any issues relating to those claims, can or should be submitted to the jury. America Can! Cars for Kids' proposed jury verdict form is made without waiving its motions, its objections to Kars 4 Kids' claims or the evidence admitted, or lack thereof, through the end of trial.

PROPOSED VERDICT FORM

We, the jury, return the following verdict:

America Can! Cars for Kids' Trademark Infringement Claim

1. Do you find by a preponderance of the evidence that America Can! Cars for Kids owns a trademark in CARS FOR KIDS that it used in commerce prior to the date of first use of KARS 4 KIDS and 1-877-KARS-4-KIDS marks in one or more of the geographic areas in dispute?

Answer **"YES"** or **"NO"**.

Answer: _____

2. Do you find by a preponderance of the evidence that one or more of the geographic areas in which Kars 4 Kids, Inc. uses its mark(s) lies within America Can! Cars for Kids' zone of natural expansion.

Answer **"YES"** or **"NO"**.

Answer: _____

Proceed to Question No. 3.

3. Do you find by a preponderance of the evidence that America Can! Cars for Kids built an identifiable public image in the activities it conducted in one or more geographic areas so that its image of car donation and auction activities traveled to other areas through advertising or word of mouth?

Answer **"YES"** or **"NO"**.

Answer: _____

Proceed to Question No. 4.

4. Do you find by a preponderance of the evidence that America Can! Cars for Kids' trademark CARS FOR KIDS was distinctive prior to the date of first use by Kars 4 Kids, Inc. of KARS 4 KIDS and/or 1-877-KARS-4-KIDS, either because America Can! Cars for Kids' trademark was inherently distinctive or because it had acquired distinctiveness?

Answer **"YES"** or **"NO"**.

Answer: _____

If your answer is “Yes,” then go to Question No. 5. If your answer is “No,” go on to Question No. 9.

INFRINGEMENT

5. Do you find by a preponderance of the evidence that Kars 4 Kids, Inc. uses KARS 4 KIDS and/or 1-877-KARS-4-KIDS in commerce in connection with the sale, offering for sale, distribution, or advertising of goods or services?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 6.

6. Do you find by a preponderance of the evidence that Kars 4 Kids, Inc. used marks in commerce in connection with the sale, offering for sale, distribution, or advertising of goods or services?

Answer “YES” or “NO” as to each Mark.

KARS 4 KIDS	Yes _____	No_____
1-877-KARS-4-KIDS	Yes _____	No_____
Write Off The Car, Not The Kid	Yes _____	No_____

Proceed to Question 7.

7. Do you find by a preponderance of the evidence that Kars 4 Kids Inc.’s use of the marks KARS 4 KIDS and/or 1-877-KARS-4-KIDS,” and/or “Write Off The Car, Not The Kid” causes a likelihood of confusion with America Can! Cars for Kids’ Marks?

Answer “YES” or “NO” as to each Mark.

KARS 4 KIDS	Yes ____	No ____
1-877-KARS-4-KIDS	Yes ____	No ____
Write Off The Car, Not The Kid	Yes ____	No ____

Proceed to Question 8.

8. Do you find by a preponderance of the evidence that Kars 4 Kids, Inc.’s use of other marks causes a likelihood of confusion?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 9.

UNFAIR COMPETITION

9. Do you find that America Can! Cars for Kids has shown by a preponderance of the evidence that Kars 4 Kids, Inc. engaged in “unfair competition” with America Can! Cars for Kids as that term is used in the jury instructions.

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 10.

DILUTION

10. Do you find by a preponderance of the evidence that Kars 4 Kids' use of the mark(s) in commerce has caused a dilution, as that term is used in the jury instructions, of or more of America Can! Cars for Kids' Marks?

Answer **"YES"** or **"NO"**.

Answer: _____

Proceed to Question 11.

FALSE OR FRAUDULENT REGISTRATION

11. Has America Can! Cars for Kids' proved by clear and convincing evidence that Kars 4 Kids, Inc. committed fraud or inequitable conduct on the United States Patent and Trademark Office?

Answer **"YES"** or **"NO"**.

Answer: _____

Proceed to Next Question.

REMEDIES

If you answered “Yes” to Question Nos. 7 or 8, answer Question No. 12. If you answered “No” to Question Nos. 7 or 8, do not answer Question No. 12, and proceed to Question 13.

Damages for Trademark Infringement

12. What sum of money, if paid now in cash, would fairly and reasonably compensate America Can! Cars for Kids for the damages that resulted from Kars 4 Kids’ conduct?

Answer in dollars and cents. Do not include any amount for interest.

A. Profits of Kars 4 Kids, Inc. from its use of the Marks.

\$ _____

B. Actual damages resulting Kars 4 Kids, Inc.’s use of the Marks.

\$ _____

Proceed to Question 13.

If you answered YES to Question 9, answer Question No. 13. If you answered “No” to Question No. 9, do not answer Question No. 13, and proceed to Question 14.

Damages for Unfair Competition

13. What sum of money, if paid now in cash, would fairly and reasonably compensate America Can! Cars for Kids for the damages that resulted from Kars 4 Kids' Unfair Competition?

Answer separately in dollars and cents for damages, if any.

- a. Damages sustained in the past.

Damages: \$_____

- b. Damages that, in reasonable probability, will be sustained in the future.

Damages: \$_____

If you answered YES to Question 10, answer Question No. 14. If you answered "No" to Question No. 10, do not answer Question No. 14, and proceed to Question 15.

Damages for False or Fraudulent Registration

14. What sum of money, if paid now in cash, would fairly and reasonably compensate America Can! Cars for Kids for the damages that resulted from Kars 4 Kids' false or fraudulent registration with the United States Patent and Trademark Office?

Answer separately in dollars and cents for damages, if any.

- a. Damages sustained in the past.

Damages: \$_____

- b. Damages that, in reasonable probability, will be sustained in the future.

Damages: \$_____

EXCEPTIONAL CASE

If you answered “Yes” to Question Nos. 7, 8, 9, 10 or 11, answer Question No. 15. If you answered “No” to each of Question Nos. 7, 8, 9, 10 AND 11, do not answer Question No. 15, and proceed to Question 16.

15. Did America Can! Cars for Kids prove that Kars 4 Kids’ use of the mark was malicious, fraudulent, deliberate or willful?

Answer **“YES” or “NO”** as to each Mark”

Cars for Kids Yes _____ No_____

Write Off The Car, Not The Kid Yes _____ No_____

Proceed to Next Question.

EXEMPLARY DAMAGES

I If you answered “Yes” to Question Nos. 7, 8, 9, 10 or 11, answer Question No. 16. If you answered “No” to Question Nos. 7, 8, 9, 10 AND 11, do not answer Question No. 16 or 17, and proceed to Question 18.

16. Did America Can! Cars for Kids prove that the harm to it resulted from malice or fraud on the part of Kars 4 Kids, Inc.?

Answer “YES” or “NO”.

Answer: _____

Proceed to Next Question.

If you answered “Yes” in Question No. 16, answer Question No. 17. If you answered “No”, do not answer Question No. 17 and proceed to Question 18.

17. What sum of money, if any, if paid now in cash, should be assessed against Kars 4 Kids, Inc. and awarded to America Can! Cars for Kids as exemplary damages, if any, for the conduct found in answer to Question No. 16?

“Exemplary damages” means an amount that you may in your discretion award as a penalty or by way of punishment. Factors to consider in awarding exemplary damages, if any, are: (1) the nature of the wrong; (2) the character of the conduct involved; (3) the degree of culpability of Kars 4 Kids; (4) the situation and sensibilities of the parties concerned; (5) the extent to which such conduct offends a public sense of justice and propriety; and (6) the net worth of Kars 4 Kids.

Answer in dollars and cents, if any.

Damages: \$ _____

Kars 4 Kids Inc.'s Affirmative Defenses

18. Has Kars 4 Kids proved preponderance of the evidence that America Can! Cars for Kids' claims are barred because of laches?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 18, answer Question No. 19.

19. In what amount, if any, do you find that America Can! Cars for Kids' damages should be reduced as a result of laches?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

20. Has Kars 4 Kids proved by a preponderance of the evidence that America Can! Cars for Kids' claims are barred because of consent?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 20, answer Question No. 21.

21. In what amount, if any, do you find that America Can! Cars for Kids' damages should be reduced as a result of consent?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

Attorneys' Fees

22. Do you find that America Can! Cars for Kids' has shown by a preponderance of the evidence that it incurred reasonable and necessary attorneys' fees?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 22, answer Question No. 23.

23. If you answered yes to the previous Question, enter the amount of the reasonable and necessary attorneys' fees to award to America Can! Cars for Kids.'

Answer in dollars and cents for damages.

\$ _____

Kars 4 Kids' Trademark Infringement Claim

24. Do you find by a preponderance of the evidence that Kars 4 Kids, Inc. owns a trademark in KARS 4 KIDS that it used in commerce prior to the date of first use by America Can! Cars for Kids' use of the CARS FOR KIDS mark in one or more of the geographic areas in dispute?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 24, answer Question No. 25. If you answered "No," do not answer Question No. 25 and proceed to Question 26.

25. Do you find by a preponderance of the evidence that KARS 4 KIDS was distinctive prior to the date of America Can! Cars for Kids' first use of the CARS FOR KIDS mark?

Answer **"YES"** or **"NO"**.

Answer: _____

Proceed to Question 26.

26. Do you find by a preponderance of the evidence that Kars 4 Kids owns a trademark in 1-877-KARS-4-KIDS that it used in commerce prior to the date of first use by America Can! Cars for Kids' use of the CARS FOR KIDS mark in one or more of the geographic areas in dispute?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 26, answer Question No. 27. If you answered "No," do not answer Question No. 27 and proceed to Question 28.

27. Do you find by a preponderance of the evidence that 1-877-KARS-4-KIDS was distinctive prior to the date of America Can! Cars for Kids' first use of the CARS FOR KIDS mark?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 25 or 27, answer Question No. 28. If you answered "No" to Questions 25 and 27, do not answer Question No. 28 and proceed to Question 31.

INFRINGEMENT

28. Do you find by a preponderance of the evidence that America Can! Cars for Kids uses CARS FOR KIDS in commerce in connection with the sale, offering for sale, distribution, or advertising of goods or services?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 29.

29. Do you find by a preponderance of the evidence that America Can! Cars for Kids’ use of the CARS FOR KIDS mark causes a likelihood of confusion with KARS 4 KIDS?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 30.

30. Do you find by a preponderance of the evidence that America Can! Cars for Kids’ use of the CARS FOR KIDS mark causes a likelihood of confusion with 1-877-KARS-4-KIDS?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 31.

UNFAIR COMPETITION

31. Do you find that Kars 4 Kids, Inc. has shown by a preponderance of the evidence that America Can! Cars for Kids engaged in “unfair competition” with Kars 4 Kids, Inc. as that term is used in the jury instructions?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 32.

DILUTION

32. Do you find by a preponderance of the evidence that America Can! Cars for Kids’ use of CARS FOR KIDS in commerce has caused a dilution, as that term is used in the jury instructions, of the mark KARS 4 KIDS?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 33.

33. Do you find by a preponderance of the evidence that America Can! Cars for Kids’ use of CARS FOR KIDS in commerce has caused a dilution, as that term is used in the jury instructions, of the mark 1-877-KARS-4-KIDS?

Answer “YES” or “NO”.

Answer: _____

Proceed to Question 34.

REMEDIES

If you answered “Yes” to Question Nos. 29, or 30 answer Question No. 34. If you answered “No” to Question Nos. 29 AND 30, do not answer Question No. 34, and proceed to Question 35.

34. What sum of money, if paid now in cash, would fairly and reasonably compensate Kars 4 Kids for the damages that resulted from America Can! Cars for Kids’ conduct?

Answer in dollars and cents, if any. Do not include any amount for interest.

A. Profits of America Can! Cars for Kids from its use of the Marks.

\$_____

B. Actual damages resulting from America Can! Cars for Kids’ use of the CARS FOR KIDS mark.

\$_____

Proceed to Question 35.

If you answered YES to Questions No. 31 answer Question No. 35. If you answered “No” to Questions No. 31, do not answer Question No. 35, and proceed to Question 36.

35. What sum of money, if paid now in cash, would fairly and reasonably compensate Kars 4 Kids for the damages that resulted from America Can! Cars for Kids’ Unfair Competition?

Answer separately in dollars and cents for damages, if any.

a. Damages sustained in the past.

Damages: \$_____

- b. Damages that, in reasonable probability, will be sustained in the future.

Damages: \$_____

Proceed to Question 36.

If you answered YES to Questions No. 32 answer Question No. 36. If you answered “No” to Questions No. 32, do not answer Question No. 36, and proceed to Question 37.

36. What sum of money, if paid now in cash, would fairly and reasonably compensate Kars 4 Kids for the damages that resulted from America Can! Cars for Kids’ use of the CARS FOR KIDS mark in dilution?

Answer separately in dollars and cents for damages, if any.

- a. Damages sustained in the past.

Damages: \$_____

- b. Damages that, in reasonable probability, will be sustained in the future.

Damages: \$_____

Proceed to Question 37.

America Can! Cars for Kids' Affirmative Defenses

37. Has America Can! Cars for Kids' proved preponderance of the evidence that Kars 4 Kids' claims are barred because of laches?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 37, answer Question No. 38. If you answered "NO", proceed to Question 39.

38. In what amount, if any, do you find that Kars 4 Kids' damages should be reduced as a result of laches?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

39. Has America Can! Cars for Kids' proved by clear and convincing evidence that Kars 4 Kids' claims are barred because of fraud or inequitable conduct on the United States Patent and Trademark Office?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 39, answer Question No. 40. If you answered "NO", proceed to Question No. 41.

40. In what amount, if any, do you find that Kars 4 Kids' damages should be reduced as a result of fraud or inequitable conduct on the United States Patent and Trademark Office?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

41. Has America Can! Cars for Kids' proved preponderance of the evidence that Kars 4 Kids' claims are barred because of unclean hands?

Answer "YES" or "NO".

Answer: _____

If you answered "Yes" in Question No. 41, answer Question No. 42. If you answered "NO", proceed to the next question.

42. In what amount, if any, do you find that Kars 4 Kids' damages should be reduced as a result of unclean hands?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

43. Has America Can! Cars for Kids' proved preponderance of the evidence that Kars 4 Kids' claims are barred because of estoppel?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 43, answer Question No. 44. If you answered "NO", proceed to Question 45.

44. In what amount, if any, do you find that Kars 4 Kids' damages should be reduced as a result of estoppel?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

45. Has America Can! Cars for Kids' proved by a preponderance of the evidence that Kars 4 Kids' claims are barred because of consent or acquiescence?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 45, answer Question No. 46. If you answered "NO", proceed to the next question.

46. In what amount, if any, do you find that Kars 4 Kids' damages should be reduced as a result of consent or acquiescence?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

47. Has America Can! Cars for Kids' proved preponderance of the evidence that Kars 4 Kids' claims are barred because of its failure to state a claim for which relief can be granted?

Answer **"YES"** or **"NO"**.

Answer: _____

If you answered "Yes" in Question No. 47, answer Question No. 48. If you answered "NO", proceed to the next question.

48. In what amount, if any, do you find that Kars 4 Kids' damages should be reduced because of its failure to state a claim for which relief can be granted?

Write the amount in dollars and cents, if any, in the space provided below.

\$ _____

SIGN AND DATE THE VERDICT:

SO SAY WE ALL, this _____ day of _____, 2019.

(Print Jury Foreperson's Name)

(Jury Foreperson's Signature)

Dated: April 18, 2019

Respectfully submitted,

s/ Karen A. Confoy

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